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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
Amendment of Part 25 of the)
Commission's Rules to Establish)
Rules and Policies Pertaining)
to the Second Processing Round)
of the Non-Voice, Non-Geostationary)
Mobile Satellite Service)

IB Docket No. 96-220

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

REPLY COMMENTS OF CTA COMMERCIAL SYSTEMS, INC.

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Summary

CTA appreciates the efforts of the Commission to resolve the difficult issues that thus far have prevented the licensing of a second round of Little LEO providers. In these reply comments, CTA highlights areas of agreement and disagreement with other parties commenting in this proceeding. There is widespread agreement that auctions should not be used to allocate Little LEO spectrum, and that some form of spectrum sharing is feasible among a limited class of second round applicants.

In these reply comments, CTA: (1) reiterates its support for the Commission's eligibility and attribution rules, which effectively eliminate all but three applicants from the proceeding; (2) urges the Commission to license as many additional Little LEO systems as possible, including not only large, real-time systems, but also smaller systems that are capable of serving niche markets; (3) reiterates its support for a Commission allocation of WRC-95 and WRC-97 spectrum to second round applicants; (4) endorses Leo One's band sharing plan; (5) supports E-Sat's request that the Commission accommodate spread-spectrum systems in the Little LEO licensing rules; (6) urges the Commission not to permit Orbcomm to migrate to the NOAA channels; and (7) reiterates its opposition to the Commission's proposals to bar exclusive arrangements, and to impose position determination obligations on Little LEO providers.

In addition, CTA reiterates its view, expressed earlier in a joint Motion for Deferral filed with Leo One, that the Commission should defer the filing of amended applications until 30 days after the adoption of new rules in this proceeding. As the

Commission is aware, the Little LEO applicants have been working diligently to reach a settlement in this proceeding. Even in the absence of a settlement, the public interest would not be served by a premature filing of amended applications. Such a requirement would be a considerable waste of Commission and applicant resources.

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To: The Commission

REPLY COMMENTS OF CTA COMMERCIAL SYSTEMS, INC.

CTA Commercial Systems, Inc. ("CTA"), by its attorneys, hereby replies to the comments filed in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. FCC 96-426 (Oct. 29, 1996). In comments filed on December 20, 1996, CTA endorsed the FCC's proposal to limit eligibility for second-round non-voice, non-geostationary ("NVNG") mobile satellite system ("MSS") licenses to those having no interest in, or affiliation with, a first-round NVNG licensee. CTA also suggested a concrete means of improving the Commission's spectrum sharing proposals, by effectively merging the spectrum proposed for System-1 with that proposed for System-3. Finally, CTA -- along with every other commenting party -- expressed its strong opposition to auctions as a means of allocating NVNG spectrum.

In these reply comments, CTA highlights several areas of disagreement with other parties. It is important to emphasize, however, that there are two broad areas of

agreement: (i) that auctions should not be used, as noted above; and (ii) that some means of sharing spectrum is feasible among a limited class of NVNG second round licensees.

I. ELIGIBILITY FOR SECOND ROUND LICENSES SHOULD BE LIMITED TO NEW ENTRANTS ONLY.

As CTA argued in its comments, the Commission has wisely chosen to limit eligibility for the second NVNG licensing round to those applicants that do not already hold licenses or have affiliations with existing licensees. In addition, the Commission's affiliation rules correctly identify the various means by which control and influence may be exercised over a licensee. Application of these affiliation rules eliminates Orbital Communications Corporation ("Orbcomm"), GE American Communications, Inc. ("GE Americom"), GE Starsys Global Positioning, Inc. ("GE-Starsys"), Volunteers in Technical Assistance ("VITA"), and Final Analysis Inc. ("FAI") from eligibility for this processing round.

CTA, Leo One USA Corporation ("Leo One"), E-Sat, Inc. ("E-Sat"), and FAI agree with the Commission's determination that existing licensees and their affiliates should be barred from consideration in the second processing round. Predictably, the first round licensees and their affiliates for the most part do not agree with this assessment. Orbcomm, for example, argues that the Commission does not have the authority to eliminate existing licensees from the second processing round. This argument does not withstand scrutiny. It is a well-established principle of administrative law that an administrative agency has the discretion to adopt new rules in an adjudication and apply the new rules to the parties in the

adjudication.^{1/} Applicants in the second round that hold, control or have the ability to influence first round licensees are entitled only to administrative due process, i.e., notice and an opportunity to be heard. The Commission has provided that opportunity through its Notice of Proposed Rulemaking; it has no further responsibility or obligation to first round licensees.

For its part, VITA argues that the Commission's proposal to eliminate all existing licensees from eligibility for the second round should not apply to it, because of the non-commercial nature of its activities. VITA urges the Commission to consider the importance of its humanitarian mission, and argues that if it is not permitted to expand its system (by adding a third satellite) as proposed in its second round application, it will not be able to serve its target users.^{2/}

VITA's request is without merit. VITA currently holds an authorization to launch one satellite; its request for a second satellite authorization was deferred because of VITA's inability to demonstrate financial qualifications to construct and launch more than one satellite.^{3/} In declining to grant VITA authorization for this second satellite, the Commission noted that it was not willing to allow an applicant to tie up spectrum where

^{1/} See, e.g., SEC v. Chenery Corp. 332 U.S. 194, 202 (1947) (stating that an administrative agency must be equipped to act either by general rule or by individual order, and that not every principle necessary for effective administration should be cast into the mold of a general rule); Central Florida Enterprises, Inc. v. FCC, 683 F.2d 503, 506 (D.C. Cir. 1982), cert. denied, 460 U.S. 1084 (1983) (affirming an FCC adjudicatory decision that was based on new principles formulated by the FCC in the middle of an adjudication).

^{2/} See VITA Comments at 3.

^{3/} See In the Matter of the Application of Volunteers in Technical Assistance, DA 95-1630, released July 21, 1995, at 15.

there is uncertainty as to whether a proposed use of the spectrum would be realized.^{4/} Due to unfortunate circumstances beyond its control, deployment of VITA's first satellite has been delayed.^{5/} Even taking into account these unfortunate circumstances, however, VITA has yet to demonstrate the financial capability to launch its second satellite; as CTA pointed out in its comments, given the severe scarcity of available spectrum, first round licensees should not be given an opportunity to expand their systems until the second processing round has been concluded and until first round licensees can demonstrate that existing authorized capacity is being utilized fully.^{6/}

Moreover, VITA's arguments, even if they had merit, are completely undermined by the nature of its relationship with Final Analysis. It is by no means clear, for example, that any extra capacity obtained by VITA would be used for humanitarian purposes; instead it appears to be at least equally probable that such capacity would be used by FAI or others for commercial applications.

^{4/} Id.

^{5/} As VITA points out, when the Commission granted VITA authority to launch and operate its first satellite, it gave VITA ninety days within which to make a financial showing for its second satellite. As a result of the destruction of its first satellite during launch, VITA requested additional time to make this showing; that request is still pending before the Commission. See VITA Comments at 7.

^{6/} In its comments, E-Sat supports the Commission's proposal to exclude existing licensees and their affiliates from the second process round, but urges the Commission to allow any unfulfilled pending second round applications to remain pending, arguing that this will give these applicants an incentive to work for additional spectrum at WRC-97. CTA does not object to this proposal, as long as the Commission makes clear that the pendency of these applications in no way prejudices the rights of other second round applicants to any spectrum allocated at WRC-97.

FAI supports the Commission's proposal to exclude existing licensees and their affiliates from the second licensing round, but argues that it is not subject to this exclusion because it is not affiliated with a first round licensee. As CTA and others have described in detail, however, FAI's arrangement with VITA falls squarely within the Commission's definition of affiliation.^{7/} Specifically, FAI will have the ability to influence VITA to take action to protect FAI's interest in the VITA satellite system. Indeed, FAI's ability to direct the operation, TT&C and the use of the signals of the satellite, in addition to FAI's authority over the day-to-day operations of the satellite, raise questions as to whether actual control over the satellite has been transferred; at a minimum, it is clear that FAI is affiliated with first round licensee VITA and thus is not eligible for inclusion in the second processing round.

II. THE COMMISSION SHOULD ALLOW THE MARKETPLACE TO DETERMINE THE NUMBER OF VIABLE NVNG SYSTEMS.

CTA and other commenters demonstrate conclusively that there is a growing and viable market for Little LEO services, and that competition would greatly enhance the provision of service and benefits to consumers.^{8/} Leo One and FAI argue that the Commission should focus on the need to license another large, real-time system to provide

^{7/} See CTA Comments at 5-6; Leo One Comments at 22. In the NPRM the Commission concludes that "influence" over a licensee is an "interest that is less than controlling but through which the holder is likely to induce a licensee or permittee to take action to protect the investment." NPRM ¶ 17.

^{8/} See CTA Comments at 8-13; Leo One Comments at 7-20; E-Sat Comments at 7-8 and 18-22; FAI Comments at 4-10.

meaningful competition to Orbcomm.^{9/} Although CTA agrees that another real time system certainly would be of benefit to consumers, CTA reiterates its view, described in greater detail below, that the Little LEO market offers opportunities for a wide range of services, and that the public interest will be most enhanced by the licensing of as many NVNG systems as possible.^{10/}

Orbcomm, GE-Starsys and Iridium LLC ("Iridium") argue that the Little Leo market is already sufficiently competitive, and that the public interest will not be served by the licensing of additional NVNG providers.^{11/} In particular, Orbcomm and Iridium argue that the FCC has not taken into account the presence of foreign-licensed NVNG satellite systems.^{12/} In addition, Orbcomm, GE-Starsys and Iridium argue that the Commission has not considered sufficiently the existence of substitutable or comparable services.^{13/}

In response, CTA notes that the foreign systems to which Orbcomm and Iridium refer are for the most part paper systems with no real funding or prospect for actual deployment. For example, despite the efforts of various of the second round applicants, few (if any) details regarding funding for the French Little Leo system have been uncovered. Moreover, there is no evidence that the Russian system to which Orbcomm refers is capable

^{9/} See Leo One Comments at 7-20; FAI Comments at 4-10.

^{10/} See CTA Comments at 8-13. See also E-Sat Comments at 7-8 and 18-22.

^{11/} See Orbcomm Comments at 22-33; Joint Comments of GE-Starsys Global Positioning, Inc. and GE American Communications ("GE-Starsys Comments") at 10-12; Iridium Comments at 3-4.

^{12/} Orbcomm Comments at 22-24.

^{13/} Id.; GE-Starsys Comments at 11-12, Iridium Comments at 3-4.

of providing competitive commercial service. A few other small (i.e., one to two satellites) foreign systems exist, but largely for experimental reasons. As a result, it seems clear that for the foreseeable future these foreign-licensed systems will offer no real competition in the Little LEO market.

With regard to comparable or substitutable services, as CTA has explained in detail in its comments, there are not currently any such services that can offer Little Leo applications at either comparable costs or comparable geographic coverage.^{14/} For example, although geostationary orbit (“GEO”) and Big LEO providers are capable of providing low data rate services, such services would have to be offered at significantly higher costs, both because of the cost of these space segments and because of the higher terminal costs associated with these systems.

CTA urges the Commission to avoid the temptation to “fine-tune” the number of optimal NVNG licensees. Instead, the Commission should license as many applicants as possible, and allow the marketplace to determine winners and losers.

III. WRC-95 AND WRC-97 SPECTRUM SHOULD BE ALLOCATED TO EXISTING APPLICANTS AND LICENSEES.

There was unanimous agreement on the part of those commenters in this proceeding that addressed the issue of allocating WRC-95 and WRC-97 NVNG spectrum that this spectrum should be reserved for existing applicants and licensees.^{15/} As the Commission

^{14/} CTA Comments at 9-10.

^{15/} See CTA Comments at 26-27; GE-Starsys Comments at 12-14; E-Sat Comments at 15; FAI Comments at 29-31; Leo One Comments at 38;

(continued...)

itself pointed out, second round NVNG applicants were instrumental in convincing Administrations at WRC-95 to allocate additional spectrum for these systems.^{16/} Allocation of the limited spectrum awarded at WRC-95 to parties who were not active participants in that process would be highly inequitable, and is not required by statute or regulation.^{17/}

Similar efforts on the part of these applicants will be required to obtain critically needed spectrum at WRC-97. CTA urges the Commission to provide a strong incentive for active participation by these applicants in the WRC-97 process by clarifying that any spectrum allocated at WRC-97 will be awarded to the second round applicants.

^{15/} (...continued)

Orbcomm Comments at 44-46. Although several commenters express concern about potential interference with Land Mobile Radio systems that could stem from the WRC-95 NVNG allocation of the 454.000-459.000 MHz frequency band, no commenter expressed support for the proposition that WRC NVNG allocations should be made available to a third NVNG processing round. See, e.g., Comments of the American Petroleum Institute; Comments of U.S. Oil & Refining Company; Comments of the Industrial Telecommunications Association, Inc. CTA believes that the concerns expressed by these commenters can be met through coordination and strict non-interference standards.

^{16/} NPRM ¶ 78.

^{17/} As the Commission itself explains in the NPRM, it need not open each and every frequency for competing applications before assigning it. NPRM ¶ 78, citing *Rainbow Broadcasting v. FCC*, 949 F.2d 405, 409-10 (D.C. Cir. 1991).

IV. SEVERAL IMPROVEMENTS TO THE COMMISSION'S PROPOSAL FOR THE LITTLE LEO SPECTRUM ALLOCATIONS SHOULD BE ADOPTED.

A. The Commission Should Adopt Rules Accommodating Spread-Spectrum Systems.

CTA agrees with E-Sat's proposal that the Commission accommodate spread-spectrum systems, such as CDMA systems, in the Little LEO licensing rules.^{18/} Employment of such technologies should permit applicants to operate Little LEO systems for certain applications without causing interference to other NVNG MSS systems, thus permitting efficient use of the limited spectrum available for NVNG MSS systems and reducing the number of mutually exclusive license applications.

CTA has reviewed E-SAT's specific proposal for its system, and, based on this preliminary analysis, CTA believes that E-SAT's system will not cause interference to other licensees in either the uplink or downlink bands of the Commission's proposed System-2 or System-3. Therefore, CTA urges the Commission to permit E-Sat's proposed CDMA system, operating at a power flux density in both directions of -150 dBW/m²/4kHz or below, on a shared basis in the bands that currently are licensed and proposed for licensing in the second processing round, without the need for a dedicated, segmented, spectrum assignment.^{19/} Licensing E-Sat's system, subject to the condition that it not interfere with other Little LEO systems in round one or round two, will aid resolution of the spectrum shortage among the remaining applicants.

^{18/} E-Sat Comments at 11.

^{19/} See id.

B. Leo One's Bandsharing Proposal Should Be Adopted.

In its comments, CTA urged the Commission to amend its channel assignment plan to provide for two, rather than three, second round systems. CTA suggested that the Commission combine the spectrum corresponding to System-1 with that proposed for System-3.^{20/} Leo One strongly concurred that two systems rather than three systems should be licensed, and proposed a detailed bandsharing plan of its own in its comments.^{21/} Under Leo One's proposal, "System A" would use the downlink spectrum corresponding to the Commission's System-1 and System-3, while "System B" would use the downlink spectrum corresponding to the Commission's System-2. For the uplink, Leo One proposed that the spectrum available be used equally by System A and System B.^{22/}

CTA has reviewed Leo One's proposal, and believes that the bandsharing approach described by Leo One constitutes an improvement on the scheme presented by the Commission in the NPRM and by CTA in its comments, and should be adopted. As recognized by Leo One, the existence of the Russian Radio-Navigation Satellite Service ("RNSS") operations in the 149.95-150.05 MHz bands will make coordination with user terminals of a Little Leo system problematic.^{23/} In view of this obstacle, confining service uplinks to the 148.905-149.81 MHz band, and feeder uplinks to the 149.9 - 150.05 MHz

^{20/} CTA Comments at 23.

^{21/} Leo One Comments at 32.

^{22/} Id. at 33-34.

^{23/} Id., Appendix E, at 56.

bands is a technically sound method for preserving uplink throughput, while at the same time reducing the need for coordination with the Russian RNSS.

C. The Commission's Rules Should Accommodate Small-To-Medium Little LEO Systems.

While CTA supports Leo One's proposed band plan, CTA does not agree with Leo One's conclusion that the spectrum must be licensed to only two large, near-real time systems, in order to permit such systems to compete on equal footing with the first round Little LEO licensees.^{24/} As CTA explained in its comments, CTA believes that smaller, non-real time systems are also economically viable, and can be accommodated within the second round licensing process, without precluding the licensing of one or more larger systems.^{25/}

Specifically, CTA believes that several small-to-medium, non-real time systems can be operated successfully in either of System A or System B, by using the time-sharing techniques proposed for sharing with government systems.^{26/} It should also be possible to accommodate one large real time system and one small, narrowly-focused, non-real time system within either of the System A or System B allocations. The Commission should adopt rules providing for as many such systems as possible in order to permit the Little LEO applicants to satisfy diverse customer requirements, thereby enhancing competition.

^{24/} Id. at 26-28.

^{25/} Id. at 14.

^{26/} Id. at 21-23, 25.

V. THE COMMISSION SHOULD NOT PERMIT ORBCOMM TO MIGRATE TO THE NOAA CHANNELS AT 137.485-137.515 MHz AND 137.605-137.635 MHz.

As Leo One points out in its comments,^{27/} the Commission indicated in the NPRM that NOAA and Orbcomm have been coordinating Orbcomm's use of the 137-138 MHz band such that Orbcomm will have to migrate its operations to two of the NOAA channels, specifically the 137.485-137.515 MHz and the 137.605-137.635 MHz channels, in order to avoid interference.^{28/} As a result, the Commission indicated that any proposal by the second round applicants to use the 137-138 MHz band would be limited to the use of as few as two of the NOAA channels, specifically the 137.333-137.367 MHz and 137.753-137.787 MHz channels.

As Leo One points out, CTA, Leo One, FAI, E-Sat and VITA all have requested use of these channels as part of their pending applications.^{29/} These channels thus are subject to mutually exclusive applications and, at a minimum, cannot be arbitrarily assigned by the Commission without notice and comment to the affected parties. Moreover, assignment of these frequencies to Orbcomm would be particularly troubling in this instance, inasmuch as Orbcomm, unlike the other parties listed above, has not filed a formal request for these channels.^{30/}

^{27/} Leo One Comments at 48-49.

^{28/} NPRM ¶ 53.

^{29/} Leo One Comments at 48.

^{30/} Id.

VI. COMMENTERS IN THE PROCEEDING UNANIMOUSLY OPPOSE AUCTIONS.

Of the numerous issues raised in the NPRM, none solicited the unanimous and profound opposition that resulted from the Commission's proposal to conduct auctions of the Little Leo spectrum if mutual exclusivity issues are not resolved.

Commenters raised numerous policy and statutory grounds for rejecting this proposal, including: (1) U.S. auctions of satellite spectrum would trigger sequential satellite auctions around the world, crippling the U.S. satellite industry; (2) auctions would cause significant delay in the introduction of competitive Little LEO systems, harming the public interest; (3) uncertainty created by the auctions could dry up financing of the systems; (4) auctions could result in the loss of U.S. leadership in international satellite policy as companies seek licenses in other countries; (5) auctions could cause increased difficulty in obtaining international allocations for U.S. satellite systems; (6) auctions are unnecessary because of the ability of the Commission to resolve mutual exclusivity by other means, including the strict imposition of financial qualifications requirements and the use of spectrum efficient technology; (7) auctions are inappropriate for NVNG spectrum because it must be shared with other existing users; (8) auctions would create potential conflicts with U.S. treaty obligations; (9) auctions create the potential for warehousing of orbital positions or satellite spectrum by other countries seeking to maximize a potential sale of these resources; and (10) there is little certainty that auctions would "recapture" for the public the "value" of the spectrum.

CTA urges the Commission to consider carefully these and other compelling reasons for abandoning its proposal to auction Little LEO spectrum. The Commission should

focus instead on other means to award these licenses if mutual exclusivity exists, including the strict imposition of financial qualifications standards and/or mandating the use of more efficient technologies.

VII. THE COMMISSION SHOULD NOT BAR ALL EXCLUSIVE ARRANGEMENTS.

As CTA noted in its comments, and as the Commission itself noted, spectrum availability and coordination issues in a particular country may limit the number of systems that practically can serve that country.^{31/} CTA reiterates its concern that the Commission not adopt a blanket prohibition on such exclusive arrangements, but rather that the Commission examine proposals to enter into such arrangements on a case-by-case basis to determine whether there are legitimate technical or policy reasons for such restrictions.

VIII. THE COMMISSION SHOULD NOT IMPOSE POSITION DETERMINATION OBLIGATIONS ON NVNG PROVIDERS.

All of the commenting parties that addressed the Commission's request for comments on ways to avoid unauthorized and interfering transmissions urged the Commission not to impose such requirements.^{32/} As CTA and these other commenters noted, imposition of such a requirement could increase substantially the cost of Little Leo user terminals, with at

^{31/} CTA's views on this issue are shared by Orbcomm -- see Orbcomm Comments at 58.

^{32/} See CTA Comments at 34; Leo One Comments at 66; Orbcomm Comments at 55-57; GE-Starsys Comments at 27-28; FAI Comments at 49.

best questionable public interest benefits.^{33/} CTA urges the Commission to adopt a simpler, less costly means of preventing unauthorized and/or interfering transmissions, and recommends that it consider adopting Orbcomm's current approach to preventing such transmissions.^{34/}

To the extent that the Commission determines that some sort of position determination requirement is mandated, the Commission must apply the requirement retroactively to existing licensees, to ensure that second round applicants are not placed in an unfair competitive position.

IX. THE COMMISSION SHOULD DEFER ANY REQUIREMENT THAT APPLICANTS SUBMIT AMENDED APPLICATIONS UNTIL AFTER FINAL RULES IN THIS PROCEEDING ARE ADOPTED.

CTA and Leo One have filed with the Commission a joint Motion for Deferral of the date for filing amended applications until 30 days after the release of the Report and Order adopting new rules for the NVNG MSS.^{35/} FAI and E-Sat have filed joint comments in support of the CTA/Leo One motion.^{36/} As was outlined in the joint motion, although the Little Leo applicants greatly appreciate the efforts made by the Commission to expedite the

^{33/} See e.g., CTA Comments at 34; Orbcomm Comments at 55-56.

^{34/} Among other, unspecified measures, Orbcomm notes that it does not permit its licensees to provide service to an end user who has a billing address outside of the licensee's authorized service territory. See Orbcomm Comments at 56.

^{35/} See Joint Motion for Deferral of Leo One and CTA, filed January 6, 1997. FAI also made similar arguments in its initial comments in this proceeding. See FAI Comments at 45-46.

^{36/} See Comments on Motion for Deferral of FAI and E-Sat, filed January 8, 1997.

conclusion of this proceeding, the public interest would not be served by a premature filing of amended applications. Indeed, such a requirement would be a considerable waste of applicant and Commission resources, particularly in light of the fact that the second round applicants are working strenuously to reach a negotiated settlement of this proceeding. CTA reiterates its strong support for a deferral of the amended application filing requirement.


X. CONCLUSION

CTA greatly appreciates the efforts of the Commission in crafting the NPRM and in working with the Little LEO applicants to resolve this long-protracted proceeding. CTA believes that the Commission's approach, together with the efforts of the Little LEO applicants to reach a settlement, will lead to an equitable solution to this proceeding that will greatly enhance the public interest.

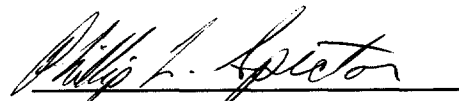
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I, Yasmin Beckford, hereby certify that I have on this 13th day of January 1997, caused to be served a copy of CTA Commercial Systems, Inc.'s Reply Comments, by hand or by first-class mail, postage prepaid, upon the following:

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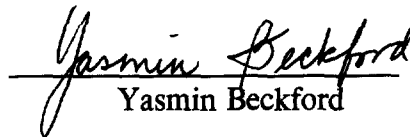
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